

30 December 1997

Re: NEPA Technical Inquiry 0211 - Floodplain Determination

Dear NEPA Call-In User:

This letter is in response to your December 8, 1997 request for assistance in a floodplain determination in Kentucky. As the result of a Congressional Inquiry into a lease extension action, you are trying to determine if a certain building is in a 100-year flood plain. In TI 210 you requested GSA floodplain management orders and related guidance, which you were able to download from the NEPA Call-In world wide web site. We also sent you in, TI 210, previous TIs related to the Kentucky site (TI 135, 135A, 135B). In TIs 135, 135A, and 135B the Army Corps of Engineers (ACE), Federal Emergency Management Agency (FEMA), and the Kentucky Division of Water were unable to make an exact determination as to whether the site is actually in a 100-year floodplain, although the representatives we spoke with did not think it was. You would now like to know if we have been able to locate more detailed hydraulic studies or data on the site since our previous investigation. You also have the following questions regarding the site in Campbellsville:

- 1) Whose responsibility is it to find this type of information within GSA?
- 2) Are GSA regional personnel able to rely upon the efforts of NEPA Call-In?
- 3) To what extent must GSA research this issue to determine if it has obtained the best available data?
- 4) Since this action is a succeeding lease, has NEPA Call-In obtained further guidance on whether this is an "Action" or "Continuing Action?"

#### SUMMARY OF FINDINGS

NEPA Call-In has not located additional detailed hydraulic information on this site since our previous investigation. We have, however, contacted additional floodplain authorities in the state of Kentucky who can help you make a determination. The responsibility for obtaining data and documenting project files is that of the regional personnel assigned responsibility for the procurement such as asset managers and realty specialists. The personnel who are taking the necessary actions associated with the lease renewal may rely on the research and guidance provided by NEPA Call-In, which is the official method National Office uses to provide guidance on such issues to the regions. We do not substitute for GSA's Legal Counsel, however. There is no rule that defines to what extent GSA must go to say the best available data has been obtained, but a reasonable effort must be made. Consultation with sources provided in this TI should constitute a reasonable effort, but Regional Counsel should be afforded the opportunity to concur. Finally, the terms "Action" and "Continuing Action" have not been further defined since our previous investigation. However, NEPA Call-In continues to recommend treating the lease renewal as a Continuing Action. Our Detailed Findings are presented below.

#### DETAILED FINDINGS

NEPA Call-In has not located more detailed hydraulic information on this site since our previous investigation in TI 135. We have, however, contacted additional flood plain authorities in the State of Kentucky who can help you make a floodplain determination.

We first contacted Mr. Robert Fuller, Chief of Planning Division, Louisville District ACE, (502) 582-5658, to determine if his office is able to help in making a floodplain determination. Mr. Fuller suggested you contact him directly for assistance under the Flood Plain Management Services Program. Mr. Fuller's staff can provide various flood plain services to you upon your request. Mr. Fuller also stated he believes the 1986 Flood Insurance Rate Map (FIRM) prepared by FEMA, which State and Federal agencies use for flood information, is still valid due to the lack of development in this area of Kentucky.

NEPA Call-In then contacted Ms. Donna Hall, Kentucky State Coordinator, National Flood Insurance Program (NFIP), Kentucky Natural Resources and Environmental Protection Cabinet, (502) 564-3410. Ms. Hall, who also used the 1986 FIRM to make a flood plain determination over the phone, stated she believes any property located on West Main Street in Kentucky, which is the address of the property in question, is not located in a Zone A (100-year flood plain). Ms. Hall suggested we also contact Ms. Debbie Gray, Planning and Zoning, Mayor's Office, Kentucky, (502) 465-3576. In a follow up phone call from you, you stated you already have a letter from Ms. Gray stating she believes the site is probably not in a Zone A.

We then contacted NEPA Liaison, Division of Cultural and Environmental Affairs, GSA National Office, to determine who at GSA is responsible for making such inquiries into a proposed action like a lease renewal. The NEPA Liaison stated the responsibility of initiating phone calls and documenting in project files is usually that of the asset managers and or realty specialists, and this responsibility is regionally determined based on regional organizational patterns. The NEPA Liaison noted that NEPA Call-In is the official method National Office uses to provide NEPA and related policy guidance and research to regional personnel and supports all guidance with a written record. The NEPA Liaison then stated that NEPA Call-In does not substitute for the regional decisionmaking process, which may frequently involve the advise of Regional Counsel.

NEPA Call-In reviewed Executive Order 11988, "Floodplain Management," but found no regulation that addresses what constitutes adequate inquiry into whether the best available data has been obtained. The NEPA Liaison stated a reasonable effort should be made into finding the best available data and recording in the case files, and believes the sources outlined in this TI, in addition to the sources provided in TI 135, represent a reasonable effort and demonstrates due diligence. Again, Regional Counsel should be given the opportunity to concur.

Finally, NEPA Call-In has found no additional guidance defining the terms "Action" and "Continuing Action." GSA Order ADM 1095.2, "Consideration of Floodplains and Wetlands in Decisionmaking," states, "All continuing activities being conducted in wetlands and floodplains shall be periodically evaluated to determine their impacts upon the wetland or floodplain. The responsible official shall establish procedures for periodic physical inspections to identify adverse impacts upon the wetlands or floodplains, to evaluate those impacts and possible mitigation measures to minimize or eliminate the impacts, and to monitor the effectiveness of the implemented mitigation measures." The NEPA

Liaison stated if the lease renewal is categorized as a "Continuing Action," then this guidance applies. The NEPA Liaison also stated documenting the opinions solicited from authorities referenced or cited in this TI that the property is not in a Flood Zone A should satisfy the intent of the guidance under "Continuing Actions" in ADM 1095.2, and demonstrates due diligence on your part. The GSA Environmental Quality Advisory Group (EQAG) recently met and discussed making substantial revisions to the current floodplain order. However, the current guidance must still be used until new orders are issued.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Call-In Researcher